IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2007

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THE HONOURABLE MR.JUSTICE C.NAGAPPAN

T.O.S. No.30 of 2002

(O.P.No.300 of 2002)

K.Jaganmohan ..Petitioner/Plaintiff

Vs

1. D.Ruckmani

2. K.Aruna ..Caveators/Defendants

For plaintiff : Mr.T.V.Ramanujam, SC for M/s.T.V.Krishnamachari, V.K.Elango.

For defendants : Mr.S.J.Jagadev

JUDGMENT

The petitioner filed the petition in O.P.No.300 of 2002 for grant of Letters of Administration of the Will, dated 19.5.1997, executed by the testator Mr.T.V.Kabali. At the instance of both the respondents, this Court by Order dated 29.7.2002, converted the original petition into Testamentary Original Suit.

2. The first defendant is the widow of the Testator T.V.Kabali and the plaintiff is their son and the second defendant is their daughter. According to the plaintiff, his father T.V.Kabali was in Government service and he was allotted Plot No.C.458, Door No.31, 46th Street, Ashok Nagar, Chennai-83 in T.S.No.59 of Block No.57 (Part) of Kodambakkam Pudur Village measuring about 1 ground and 635 sq. ft. by the Tamil Nadu Housing Board and he purchased the same by a registered sale deed, dated 12.6.1990 and it is his self-acquired property. It is further stated by the plaintiff that T.V.Kabali bequeathed that property in favour of the plaintiff absolutely by Will, dated 19.5.1997 and declared the plaintiff as the sole beneficiary and the legatee of the Will and no

executor was appointed in the Will. The plaintiff also undertakes to duly administer the property and make a full and true inventory within six months from the date of grant of Letters of Administration and also render a true account of the property and credits to the Court within one year from the said date.

3.The defendants in the written statement have stated that T.V.Kabali was in Government service and at that time he was involved in building construction activities in the name of his brother Appaswamy and he was a licensed surveyor and he acquired the suit property and put up construction in the ground floor in the year 1963, in the first floor in 1983 and the new block in the year 1996. It is further stated by the defendants that the plaintiff went abroad to U.S.A. as a student and later got employment there and he is married and settled in U.S.A. and he has no issues and late T.V.Kabali was all along with the defendants till his life-time and they took care of him and according to the defendants, during 1994-95, T.V.Kabali wanted to construct a new block consisting of ground floor and first floor, each measuring about 1100 sq. ft and the plaintiff who was employed in U.S.A. agreed to provide money for construction and T.V.Kabali promised to repay the money out of the rental income as well as the profits earned by him in construction business and the plaintiff provided nearly Rs.7 lakhs to his father for that purpose and in the year 1996, T.V.Kabali was admitted in hospital due to heart attack and the plaintiff insisted to provide some security for the money advanced by him to his father for construction of new block and for that purpose, T.V.Kabali executed a sham Will as collateral security for the money received by him for the construction of new block in the Ashok Nagar property and the Will is not intended to give any Testamentary operation but executed for giving collateral security to the plaintiff.

It is further stated by the defendants that on 19.5.1997, when the Will was said to be executed T.V.Kabali was in good health and there was no necessity for him to execute the Will and he has not left any legacy to his beloved wife viz., the first defendant and there is no reason to exclude her and hence the Will is unnatural. The defendants have further stated that the plaintiff is now aged about 40 years and well settled in U.S.A. and he has no issues and the second defendant is the only daughter and she was living with the parents and taking care of them and there is no reason for the testator to exclude both his wife and daughter and hence the Will is unnatural.

4. This Court framed the following issues for trial:

1. Whether the Will dated 19.5.1997 executed by late T.V.Kabali in the name of the plaintiff is true and genuine.

2. Whether the Will was executed by T.V.Kabali as collateral security for the money received from the plaintiff for construction of new block in Ashok Nagar property and was not intended to give any testamentary disposition.

3. To what relief the parties are entitled to.

ISSUE NOS.1 TO 3:

5. Ex.P.1 is the original registered Will, dated 19.5.1997, executed by the Testator T.V.Kabali bequeathing his house property bearing Door No.31, 46th Street, Ashok Nagar, Chennai-83 in favour of his only son, viz., the plaintiff herein. The first defendant is the wife of the testator and the second defendant is their only daughter and in their common written statement, they have admitted that T.V.Kabali executed the Will, dated 19.5.1997, but stated that the Will was not intended to give any testamentary operation and it is a sham document, executed as collateral security for the money to the tune of Rs.7 lakhs advanced by the plaintiff to the father for construction of new block in the

property bequeathed. The further case of the defendants is that the Will is unnatural for three reasons, firstly, the testator T.V.Kabali was in good health on the date of execution of the Will and there was no necessity for him to execute the Will except the fact that he had borrowed some money from the plaintiff, who was abroad, for construction of new block in the property and secondly, the relationship between the testator and his wife viz., the first defendant was very cordial, as evident from the recitals in the Will and he has not left any legacy to her in the Will and there was no reason to exclude her in the grant and thirdly, the second defendant is the only daughter, who was living with the parents and taking care of them and she has one son and daughter and it is unthinkable that the testator would give his entire property to his son, who has no issues and also well-settled in U.S.A., excluding the daughter.

6. The plaintiff examined himself as P.W.1 and has examined one of the attesting witnesses as P.W.2 to prove the Will. According to P.W.2, he was working as Superintendent in the Office of the District Registrar, Central Madras, Teynampet and the testator T.V.Kabali is his maternal uncle and on 19.5.1997, T.V.Kabali came to his office along with the other attestor Mr.Boovaraghavan and brought with him the Will and told him that he wanted to execute and register the Will bequeathing the house property in favour of his son and he must attest the same. P.W.2 has further stated that in their presence, the testator T.V.Kabali put his signature in Ex.P1 Will and he saw the same and thereafter, both he and Mr.Boovaraghavan put their signatures as attesting witnesses in the Will and the testator T.V.Kabali saw the same and then, the Will was registered. According to P.W.2, the testator T.V.Kabali, at the time of execution of Ex.P1 Will, was hale and healthy in sound disposing state of mind and he executed the Will on his own volition.

7. Mr.T.V.Ramanujam, the learned Senior Counsel appearing for the plaintiff, submitted that the defendants have admitted that the house property is the self-acquired property of the testator T.V.Kabali and they have also not denied the execution of the Will by the testator and the second defendant in her testimony as D.W.1 has admitted that Ex.P1 Will was executed by her father and the signature found in the Will is that of her father and P.W.2 is her paternal aunt□s son and he has attested the Will. The learned Senior Counsel further submitted that the plea of sham document can be raised only by the executant and a third party to the document, who has no title, cannot raise that plea and there is no material to show as to how the document is sham and unnatural and the plaintiff has discharged his burden of proving the Will and hence he is entitled for the grant of Letters of Administration of the Will. The learned Senior Counsel relied on the following decisions in this regard.

8. A Division Bench of this Court in the decision in CORRA VEDACHALAM CHETTY AND ANOTHER v. G.JANAKIRAMAN (2001 (3) CTC 283), held that Testamentary Court is the court of conscience and not a court of suspicion and the object of probate proceedings is not to render the testamentary document ineffective but to make it effective and render the Will operative and it is for that reason the Court should be cautious while dealing with the evidence placed before them in relation to execution and attestation of the Will as also the disposing state of mind of the testator.

9. The Apex Court, in the decision in S.SUNDARESA PAI AND OTHERS v. MRS.SUMANGALA T.PAI AND ANOTHER (AIR 2002 SUPREME COURT 317), has laid down that uneven distribution of assets amongst children by itself cannot be taken as suspicious circumstance surrounding the execution of the Will.

10. Following the above decision, a Division Bench of this Court, in the decision in DR.SHANTHA v. SHARADA (2003 (4) CTC 470), has held that the purpose of the Will is to bequeath the property to a particular person and disinheritance of one or other legal heir by itself cannot be a suspicious circumstance.

11. Per contra, Mr.S.J.Jagadev, the learned counsel for the defendants, contended that execution of Ex.P1 Will is surrounded by suspicious circumstances, since the disposition therein appear unnatural, improbable and unfair in the light of relevant circumstances and the same was not intended to give any testamentary operation, but was executed only to give collateral security. In support of his submission, the learned counsel relied on the following decisions.

12. The Supreme Court, in the decision in H.VENKATACHALA IYENGAR v. B.N.THIMMAJAMMA AND OTHERS (A.I.R. 1959 SUPREME COURT 443), has laid down that the execution of the Will may be surrounded by suspicious circumstances and its presence tends to make the initial onus very heavy and unless it is satisfactorily discharged, Court would be reluctant to treat the document as the last Will of the testator.

13. In the decision in RAM PIARI v. BHAGWANT AND OTHERS (AIR 1990 SUPREME COURT 1742), the Apex Court held that even though it cannot be said to be hard and fast rule yet when disinheritance is amongst heirs of equal degree and no reason for exclusion is disclosed, then the standard of scrutiny is not the same and if the Courts failed to be alive to it, then their orders cannot be said to be beyond review.

14. Further, the Apex Court in the decision in GURDIAL KAUR & ORS. V. KARTAR KAUR & ORS. (1998-2-L.W. 134 (S.C.), observed that the law is well-settled that if there is suspicious circumstance about the execution of the Will, it is the duty of the person seeking declaration about the validity of the Will to dispel such suspicious circumstances.

15. A Division Bench of this Court, in the decision in D.KAUSALYA v. S.SANKARAN (2002 (1) TLNJ 195) has held that when there is an unjust or unnatural disposition, then the Court can certainly take into consideration of finding out as to whether the testator was acting as a free agent and with a sound disposing state of mind and the evidence in support of the execution of the Will has to be scrutinised with greater degree of care than usual.

16. Highlighting the legal position, the Apex Court in the decision in MEENAKSHIAMMAL (DEAD) THROUGH LRS. AND OTHERS v. CHANDRASEKARAN AND ANOTHER ((2005) 1 SUPREME COURT CASES 280), held that the suspicious circumstances may be regarding the genuineness of the signature of the testator, the condition of his mind, the disposition made in the Will being unnatural, improbable or unfair or there might be other indications in the Will to show that the testator□s mind was not free and in such a case, the Court would normally expect that all legitimate suspicions should be completely removed before the document is accepted as the last Will of the testator.

17. In the recent decision in B.VENKATAMUNI v. C.J.AYODHYA RAM SINGH & OTHERS (CDJ 2006 SC 861), the Supreme Court has laid down that it is wrong to proceed on the premise that compliance of legal formalities as regards proof of the Will would sub-serve the purpose and the suspicious circumstances surrounding the execution thereof is not of much significance.

18. The law is well settled. In the absence of suspicious circumstances surrounding the execution of the Will, it is sufficient for the propounder to discharge the onus by adducing proof of testamentary capacity and the proof of the signature of the testator as mandated by law. However, if there are suspicious circumstances, the propounder has to explain them to the satisfaction of the Court to discharge the onus, since the compliance of legal formalities as regards proof of the Will alone would not serve the purpose.

19. Coming to the facts of the present case, the testator was in Government service and at the time

of his retirement in the year 1991, he was Senior Accounts Officer, Labour Department. He purchased the suit property from the Tamil Nadu Housing Board as vacant land in the year 1963 and had constructed the ground floor in the year 1963 and the first floor in the year 1983 and subsequently he constructed the new block consisting of two floors in the year 1994-1995 and there is no dispute about that. It is also admitted that the testator T.V.Kabali was involved in building construction activity and was a flat promoter. The plaintiff went to U.S.A. for higher studies and got married and residing there for the past 20 years and he has no issues. The testator and his wife were living with their only daughter, viz., the second defendant, in the house at Akbar Sahib Street, Triplicane and that house was purchased jointly in the names of the first defendant and her son-in-law viz., the husband of the second defendant in the year 1991. From the testimony of D.W.1, the second defendant, it is seen that her husband was employed as a Production Engineer, drawing a salary of Rs.15,000/- per month in Simpsons Company, for a period of 15 years and he is also doing business and their son is employed and the daughter is studying. The wife of the testator viz., the first defendant, was employed as a Teacher and retired as Headmistress in the year 1994 and after the death of the testator, she continues to live with the daughter viz., the second defendant. The defendants are living in their own house at Akbar Sahib Street, Triplicane. It is true that the testator in the recitals in Ex.P1 Will had stated that he was proud to say that he was married to the first defendant in the year 1959 and they had two children who are well educated and settled in life.

20. As already seen, the son is well settled in U.S.A. and the daughter, besides house-wife, is also employed as Part-time Lecturer in Pachaiyappa□s College, Chennai. The first defendant had independent earnings through employment and has also jointly purchased a house in Triplicane, where she is residing. The testator T.V.Kabali had stated the reason in Ex.P1 Will as to why he has not given any share to his daughter in the property bequeathed and according to him, he had given sufficient movables to his daughter and she is well-settled.

21. Though the first defendant, viz., the wife of the testator, has filed the written statement, she has not chosen to appear as witness and give testimony in the case and hence adverse inference has to be drawn.

22. The defendants have not chosen to adduce any documentary evidence to show that Rs.7 lakhs was provided by the plaintiff to his father for construction of new block in Ashok Nagar property and he was insisting him to provide some security for that amount and that forced the father to execute the Will as collateral security for the money received by him. The plaintiff in his testimony has denied the alleged loan of Rs.7 lakhs and the execution of the Will as collateral security for that amount. In the cross-examination, D.W.1, the second defendant, has stated that her father told her that he is executing the Will for Rs.7 lakhs, which he took from the plaintiff. She has further stated that there is only oral evidence and there are no documents available for that. Except the interested oral testimony of D.W.1, there is no other evidence available on record and the defendants have not substantiated their case and hence the second issue is answered in the negative.

23. The Will was executed on 19.5.1997 and at that time, the plaintiff was in U.S.A. and he was not aware of the same. After a period of five months from the date of execution of the Will, the testator despatched a hand-written letter to his son, viz., the plaintiff, on 17.10.1997 and that original letter along with the postal cover has been marked as Ex.P2. The relevant portion of the letter pertaining to the Will is re-produced below for better appreciation.

□ I have sent a copy of the □WILL□ for your custody. Original is here. To get the house after me, you have to probate the Will by paying stamp duty at the present value and not future value. It may be about Rs.30,000/-. This is the last arrangement as suggested by Jeeva.□

The father after executing the Will, bequeathing the property in favour of his only son, had also directed him to probate the Will after his life-time by paying stamp duty. The above shows that the testator was in a sound disposing state of mind and he understood the nature and effect of the disposition and executed the Will out of his own volition and there is nothing unnatural or unfair in the disposition. Hence the Will is true and genuine and the plaintiff is entitled for the relief sought for in the suit. Issues 1 and 3 are answered in the affirmative.

24. In the result, the suit is decreed as prayed for. Issue Letters of Administration in favour of the plaintiff on his furnishing a personal bond for a sum of Rs.10,000/- (Rupees Ten thousand only).

vks

[PRV/9691]